

Date: May 26, 2004 Planning Commission Meeting

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report prepared by: Troy Fujimoto

Public Hearing: Yes: X No:

Notices Mailed On: 5/14/04

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TITLE: **SIX-MONTH REVIEW (PR2004-2) OF USE PERMIT AMENDMENT NO. UA2003-15**

Proposal: Six month review of the addition of live entertainment at an existing restaurant (Manila Natori) to ensure construction of a garbage enclosure and review compliance with all conditions of approval.

Location: 579 South Main Street

APN: 086-11-012

RECOMMENDATION: **Note Receipt and File**

Applicant: Bella Juniega, 579 S. Main Street, Milpitas, CA 95035

Property Owner: Seton Chow, 863 Alcosta Drive, Milpitas, CA 95035

Previous Action(s): General Plan Amendment, Rezone, "S" Zone Approval, Use Permit, EIA

General Plan Designation: Mixed Use

Present Zoning: Mixed Use with an "S" Zone Overlay (MXD-S)

Existing Land Use: Restaurant

Agenda Sent To: Applicant & Owner (as noted above)

Attachments: Notice to Abate Letter, dated May 13, 2004

PJ#2343

BACKGROUND

In September 1970, the Planning Commission approved an "S" Zone application for building additions and alterations to the existing restaurant at 579 South Main Street. Subsequent S-Zone and use permit amendments were approved for signage, increased parking, parking lot modifications, building color changes, building lighting and a residence. Since the inception of the restaurant, the name of the restaurant has changed from "Lanterns" to "Tai Ming Lo" to "Natori" to "Manila-Manila Natori". In December

2000, the Planning Commission approved an “S” Zone application for a two-story 16,227 square foot office building, which was not activated and thus expired.

In July 2002, the Planning Commission approved an “S” Zone Approval Amendment (P-SA2002-56) and a temporary Use Permit (P-UA2002-16) for building and site improvements and a request to add karaoke and dancing/live entertainment to an existing restaurant. The temporary use permit was for a six (6) month period, with an expiration of January 24, 2003.

Between July 2002 and January 2003, a phasing plan was agreed upon between the business owner (different owners at that time) and City staff that separated the conditions of approval into manageable parts. Subsequently, the applicant returned to the Planning Commission for a second, temporary 6-month use permit on January 22, 2003. The application was approved with conditions of approval that required action prior to the July 23, 2003 Planning Commission meeting.

For due process reasons, a hearing was held during the July 23rd Planning Commission meeting. At the hearing, staff recommended that the hearing be continued to make note of the automatic expiration of the temporary use permit. In addition, a new applicant, now the current applicant was in the process of submitting for a new, permanent use permit for live entertainment.

In October 2003, the Planning Commission approved an “S” Zone Amendment and Use Permit Amendment application for building and site improvements and a request to add karaoke and dancing/live entertainment to an existing restaurant. Because the site was in need of improvements given their age, staff added conditions of approval that would improve the appearance of the site and also added the current restaurant conditions of approval.

Site Description

The site is zoned Mixed Use (MXD), and is located within the Midtown area. This parcel is located between two commercial buildings, Villa Commercial Center to the south and a restaurant supply store to the north. Other surrounding land uses consist of a car wash and boat sales and boat repair shop across Main Street to the east and vacant land (owned by Santa Clara County) to the west. Lands to the east are zoned R-4 (Multi-Family Very High Density Residential), while the lands to the north, south and east are zoned MXD (Mixed Use).

ANALYSIS

When the October 2003 amendment to the restaurant use permit was approved by the Planning Commission, there were concerns with the general appearance of the site and the lack of a garbage enclosure to contain existing garbage bins. Without the enclosure, garbage bins were being stored at the rear of the building where they were very visible from Abel Street.

With the October 2003 approval, there were conditions of approval in regards to the proposed additional uses. Conditions were imposed on the project in regards to security, noise, proper garbage handling, landscaping, new garbage enclosure, certificate of occupancy concerns and private job account balances.

As part of this six-month review, staff has checked and verified that all conditions of approval have been satisfied. Notice of the six-month review was sent to all interested City departments

including Engineering, Fire, Building, Code Enforcement, and Police. The result of the six-month review of conditions of approval is that four (4) conditions still remain unsatisfied. The conditions are as follows:

4. Within six (6) months of October 8, 2003, the applicant shall restore the landscaping to the previously approved landscaping plan, ensuring that all of the required trees are on the site and dead landscaping is replaced. All required landscaping shall be continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P,PC)
7. Within six (6) months of October 8, 2003, the applicant shall submit building permit plans and construct a new garbage enclosure to the approval of the City. The garbage enclosure shall be of concrete masonry unit (cmu) construction and shall match the existing building colors and architecture style. The garbage enclosure location shall be approved by the City of Milpitas. The applicant shall work with City staff and BFI (Browning Ferris Industries) in siting of the garbage enclosure. (P,E)
19. A new certificate of occupancy shall be obtained prior to the addition of the new uses (karaoke and dancing) to the business. (B) [The applicant will be notified that they must cease entertainment operations immediately or be subject to citation/fines]
21. Within six (6) months of October 8, 2003, the applicant shall construct a trash enclosure, designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. ***The trash enclosure detail shown on the submitted plan is not per Development Guidelines for Solid Waste Services and must be revised prior to Building permit submittal.*** (E)

Two of the conditions are related to the construction of a new garbage enclosure, one of the conditions is related to restoring and maintaining landscaping at the site, and one of the conditions is related to proper building department documentation. On May 13, 2004, staff sent a notice to abate letter to the applicant in regards to the violations. The notice to abate allows 30 days (until June 13, 2004) for the applicant to correct all outstanding violations. The applicant has submitted plans for the new garbage enclosure and city comments have been relayed to the applicant. However, the applicant has not resubmitted the plans, thus building permits have not yet been issued for the garbage enclosure. In reference to the landscaping, the applicant has tried to plant some trees at the site and has done some upkeep to existing landscaping, however, the total number of trees previously approved on the landscape plan has not been planted. The applicant has stated that the remaining trees are on order and will be delivered and planted within a couple of weeks. In addition, the landscaping in the area of the parking lot has, from time to time, not been maintained adequately.

Staff has determined that the Manila Natori restaurant has not complied with all conditions of approval. Because of this, staff has begun the administrative citation process to bring the business into compliance with the existing landscaping plan and unsatisfied conditions of approval. All live entertainment uses will be suspended until a valid certificate of occupancy for the live entertainment uses is procured through the Building Division. Subsequently, once a certificate of occupancy permit is procured and if the unsatisfied conditions have not been satisfied by the June 23, 2004 Planning Commission date, staff will bring the matter back to the Planning Commission in a fully noticed revocation hearing. At that hearing staff will recommend that the Planning Commission consider the revocation of the use permit amendment

for the live entertainment, including the karaoke and make a recommendation to the City Council.

RECOMMENDATION

Close the public hearing and note receipt and file.



City of Milpitas

455 E. Calaveras Blvd.
Milpitas, California 95035



2.

May 13, 2004

CERTIFIED MAIL

APN# 8611012

Manila Manila Natori
Attn: B. V. & J. R. Juniega
579 S. Main Street
Milpitas, Ca 95035

Seton Chow
863 Alcosta Drive
Milpitas, Ca 95035

Subject: Notice to Abate-
 ▪ **Neighborhood Beautification Ordinance,**
 Title V, Chapter 500, Milpitas Municipal Code

Dear Business / Property Owner:

The City Council has adopted the Neighborhood Beautification Ordinance effective February 1, 2000, and the Neighborhood Preservation Division's responsibilities include responding to citizen complaints and enforcing this Ordinance.

Our Office has been notified of a violation of this Ordinance at 579 S. Main Street, Milpitas, Ca 95035, and in response, staff inspected your property and observed no garbage enclosure and insufficient number of trees at the site. In addition it has come to our attention that a valid Certificate of Occupancy does not exist for your restaurant (with the adding of live entertainment). Having these conditions not satisfied are in violation of the following:

Neighborhood Beautification Ordinance Section V-500-2.01

(h) (3) Miscellaneous

It is the responsibility of the property owner/occupant to abate (V-500-1.01) violations. A suggested method of abatement would be to have a total of 13 on-site trees planted and in place, complete construction of the garbage enclosure, and procure a new certificate of occupancy. **We must hereby notify you that you have thirty-one (31) calendar days from the date of this Notice to abate this condition (V-500-3.01). An inspection to verify compliance will be conducted on or after June 13, 2004.**

Please see the attached list of City resources available to assist you. If you cannot comply with this Notice by the due date because doing so will be an undue hardship, *and you are not acting as a landlord of rental property*, you may request an extension by stating your reason(s) in writing. Your request must be received within seven (7) calendar days of the date of this Notice, in this case **May 20, 2004.**

We are confident that this violation will be abated as required. However, if the condition is not abated, the Ordinance provides that, the City may abate the violation and recover the costs of abatement from you and/or impose a fine of \$100. If you have any questions, please contact me at (408) 586-3072.

Thank you for your commitment to keeping Milpitas beautiful,



Zulema C. Maggi
Housing and Neighborhood Preservation Specialist

Enclosure: Request for an extension and photos

CC:

Troy Fujimoto, Planning Division 408-586-3287

City of Milpitas
Attn: Neighborhood Preservation Division
455 E. Calaveras Blvd.
Milpitas, Ca 95035

Notice to Abate- Extension request

Name _____
Address _____
Day phone number _____
Evening phone number _____

I received a Notice to Abate, dated _____, for a violation of Sections

Neighborhood Beautification Ordinance Section V-500-2.01

(h) (3) Miscellaneous

of the Milpitas Municipal Code. I am requesting an extension of the compliance date because:

Property owner signature

Date

APPROVED SPECIAL CONDITIONS

**USE PERMIT AMENDMENT NO. P-UA2003-15 AND
S-ZONE AMENDMENT (P-SA2003-118)**

A request to add live entertainment (karaoke and dancing), add 34 seats for special events, construct a new garbage enclosure, and a request for the joint use of 20 parking spaces at an existing restaurant (Manila Natori Restaurant)

579 South Main Street

Planning Commission Approval: October 8, 2003

SPECIAL CONDITIONS

1. Use Permit Amendment No. P-UA2003-15 and S-Zone Amendment (P-SA2003-118) is for the addition of karaoke and dancing at an existing 163 seat restaurant, which will be serving all types of alcohol with hours of operation from 11:00AM to 2:00AM daily, as depicted on the approved plans dated October 8, 2003, and as amended by the approved special conditions. Any addition of seating, loss of parking, or change in nature of the operation shall require review and approval by the Planning Commission of an amendment to this Use Permit. (P)
2. The approved seating for this restaurant is 146 indoor seats. Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8½ inches by 11 inches, with a lettering height of at least 3 inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Dining room seating: 146, as per Use Permit No. P-UA2003-15 granted by the Planning Commission on September 25, 2003." For occasional special events, when the dance floor is not in use the maximum seating for the building is 197 seats. (P)
3. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations. (P)
4. Within six (6) months of October 8, 2003, the applicant shall restore the landscaping to the previously approved landscaping plan, ensuring that all of the required trees are on the site and dead landscaping is replaced. All required landscaping shall be continuously maintained as necessary to provide a permanent, attractive and effective appearance. (P,PC)
5. No outdoor loudspeakers shall be installed at any exterior locations of the building, nor shall any music of any type be played outdoors at any time. (P)
6. During times when music is played, the business shall not prop open any doors. (P)
7. Within six (6) months of October 8, 2003, the applicant shall submit building permit plans and construct a new garbage enclosure to the approval of the City. The garbage enclosure shall be of concrete masonry unit (cmu) construction and shall match the existing building colors and architecture style. The garbage enclosure location shall be approved by the City of Milpitas. The applicant shall work with City staff and BFI (Browning Ferris Industries) in siting of the garbage enclosure. (P,E)
8. The applicant shall store all garbage, tallow and recycling bins associated with this tenant, in the enclosure in perpetuity. (P)
9. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all State and local health and sanitation

standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P)

10. Prior to issuance of a certificate of occupancy the business owner shall post signs (English, Spanish, Vietnamese, and Filipino) inside the premises for all employees which identify procedures for the food delivery and disposing of garbage. (P)
11. The preparation and storage of food shall not be permitted outside of the establishment. (P)
12. Washing of containers, equipment, and floor mats shall be conducted in the kitchen area so that wash water may drain into the sanitary sewer. (P)
13. Prior to issuance of a certificate of occupancy, the business owner shall submit a report detailing a program assigning restaurant staff perpetual responsibility for complying with the following guidelines (P)
 - a) Keep garbage dumpsters clean inside and out; replace dirty or leaking dumpsters with new, clean ones.
 - b) Double or triple bag waste to prevent leaking.
 - c) Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - d) Keep the ground under and around the garbage dumpsters swept.
 - e) Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
 - f) It is expected that Best Management Practices for solid waste handling will advance over time, thus it is the expectation that the applicant will modify their practices in accordance with future standards.
14. Prior to establishing the new use, a revised security plan shall be submitted to the Planning and Police Departments to reflect that the security protocol will also be in effect on any Sunday for which a karaoke or dancing event is scheduled. (PD)
15. The proposed security plan will be reviewed by the Police Department within six (6) months from issuance of a certificate of occupancy. Modifications to the security plan can be made at this time. (PD)
16. To ensure that the garbage enclosure is built and to ensure that the project is in compliance with all approved special conditions of approval, Use Permit Amendment No. P-UA2003-11 shall be reviewed by the Planning Commission in a fully noticed public hearing *within* six (6) months of October 8, 2003, (by April 14, 2004). The Planning Commission may impose additional special conditions, if necessary, to address any issues related to the new use. (P)
17. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
18. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P)
19. A new certificate of occupancy shall be obtained prior to the addition of the new uses (karaoke and dancing) to the business. (B)
20. The applicant shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire and pay the related fees. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)
21. Within six (6) months of October 8, 2003, the applicant shall construct a trash enclosure, designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. ***The trash enclosure detail shown on the submitted plan is not per Development Guidelines for Solid Waste Services and must be revised prior to Building permit submittal.*** (E)

579 Main St Manila Natori 4-30-04

